

REMARKS

This amendment is submitted in response to the final Office Action mailed August 12, 2009. Claims 58, 61-63, 73, and 75-78 remain pending in the application. Claims 58, 63, and 75-78 stand rejected. Claims 61, 62, and 73 were withdrawn in view of a Restriction Requirement. Applicants respectfully request reconsideration of the rejections in view of the remarks below.

Information Disclosure Statements

At page 2 of the final Office Action, the Examiner comments on the number of references cited in Information Disclosure Statements filed in this application. These references have been cited by Applicants to in order to comply with Applicants' duty of disclosure, by notifying the Examiner of references cited in related applications.

Objections to the Claims

Claims 75 and 77 were objected to for alleged redundant claim language with respect to the recitation of "wherein said anchor is slidably adjustably coupled to said tensile member." Applicants respectfully traverse the Examiner's characterization of the noted claim language as being redundant. On its face, the language means that the anchor is coupled to a tensile member such that it can be adjusted by sliding. Moreover, MPEP §2173.02 states that the Examiner's focus should not be "whether more suitable language or modes of expression are available," and that Examiners "should not reject claims or insist on their own preferences if other modes of expression

selected by applicants satisfy the statutory requirement." For at least these reasons, Applicants respectfully request that the objections to claims 75 and 77 be withdrawn.

Objection to the Specification

The abstract of the specification is objected to for describing methods for performing annuloplasty but not apparatus. The abstract has been amended to address this objection, and Applicants respectfully request that the objection be withdrawn.

Claims Rejected Under 35 U.S.C. §102

Claims 58, 63, and 75-77 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,716,367 to Koike et al. Claim 58 is the only independent claim of this rejected group and is directed to a gutter catheter for performing annuloplasty. Applicants respectfully traverse the rejection of claim 58 because Koike '367 fails to disclose each and every element recited in claim 58. Specifically, Koike '367 is directed to a catheter for applying an intracardial suture. The device includes a hooking catheter 4 having suture hooking means 42 consisting of three or four hooking members bent at their distal ends to form a hook 421 for grasping and holding a suture, as depicted in FIGS. 7, 12, and 14. (Koike '367 at col. 5, lines 6-33.) At column 5, line 44-col. 7, line 8, Koike '367 explains how hooks 421 are used to apply an intracardial suture.

Nowhere in Koike '367 are suture hooks 421 described as anchors "adapted to anchor to the tissue of the heart," as set forth in claim 58, and it is not apparent from the

disclosure of Koike '367 that the suture hooks 421 could even grasp heart tissue with sufficient force to anchor to the tissue of a heart. Accordingly, the Examiner's rejection of claim 58 appears to be based on inherency. Applicants note, however, that a rejection based on inherency requires that "the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." MPEP §2112. "Inherency, however, may not be established by probabilities or possibilities." Id. Because the structure disclosed in Koike '367 is not necessarily suitable for anchoring to the tissue of a heart, Applicants respectfully request that the rejections of claim 58 be withdrawn.

Claims 63 and 75-77 each depend from independent claim 58 and are in condition for allowance for at least the reasons discussed above with respect to claim 58. Applicants further traverse the rejection of claim 63 because Koike '367 fails to disclose that "said distal catheter portion is convertible between a first condition wherein said distal catheter portion has a shape that does not conform to the contour of the gutter of the mitral valve, and a second condition where the shape of the distal catheter portion conforms to the contour of the gutter of the mitral valve," as set forth in claim 63. Specifically, Koike '367 states that the second sheath 1 comprises a sleeve 12 that is "curved in correspondence with the intracardial shape of the patient, taking account of manipulability. The curved angle of the distal portion is preferably set to about 30 degrees." (Koike '367 at col. 3, lines 44-45; col. 3, lines 66-col. 4, line 3.)(Emphasis added.) For at least these reasons, Applicants respectfully request that the rejections of claims 63 and 75-77 also be withdrawn.

Claims Rejected Under 35 U.S.C. §103

Claim 78 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Koike '367. Claim 78 depends from independent claim 58 and is in condition for allowance for at least the same reasons discussed above for claim 58. Applicants further traverse the rejection of claim 78 because Koike '367 fails to disclose "a locking element coupled to said tensile member for movement therealong relative to said anchor," as recited in claim 78 and admitted by the Examiner. (Office Action at p. 5.) The Examiner generally alleges that locking devices are well known in the medical clamping art (Office Action at p. 5.), but fails to cite any particular reference to support his allegations, or to explain how a locking device of a medical clamp would suggest a modification to the catheter assembly of Koike '367 that would result in a locking element on a tensile member, as set forth in claim 78. Accordingly, the Examiner fails to present a *prima facie* case of obviousness with respect to claim 78, and Applicants respectfully request that the rejection of claim 78 also be withdrawn.

Conclusion

In view of the foregoing amendments and the remarks set forth herein, Applicants believe this case is in condition for allowance and respectfully request early and favorable examination of the pending claims. If the Examiner believes any matter requires further discussion, the Examiner is respectfully asked to telephone the undersigned attorney so that the issue may be promptly resolved. The Examiner's prompt attention to this matter is appreciated.

Applicants do not believe that any fees are due in connection with this communication. However, if any fees are necessary to complete this communication, the Commissioner may consider this to be a request for such and charge any necessary fees to Deposit Account No. 23-3000.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.

By: /David W. Dorton/
David W. Dorton, Reg. No. 51,625

2700 Carew Tower
441 Vine Street
Cincinnati, OH 45202
(513) 241-2324 (voice)
(513) 241-6234 (facsimile)